

Business Regulation Committee

**Thursday, January 26, 2006
9:30 AM - 12:00 PM
REED HALL**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Business Regulation Committee

Start Date and Time: Thursday, January 26, 2006 09:30 am

End Date and Time: Thursday, January 26, 2006 12:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.50 hrs

Consideration of the following bill(s):

HB 73 Unlawful Taking of Personal Property or Equipment by Farkas

HB 159 Regulation of Real Estate Appraisers by McInvale

HB 333 Public Food Service Establishments by McInvale

HB 489 Electrical and Alarm System Contracting by Legg

HB 579 Cardrooms by Bullard

Introduction and comments by Secretary Simone Marstiller, Department of Business and Professional Regulation.

NOTICE FINALIZED on 01/13/2006 15:03 by REFFITT.NIKKI

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73

Unlawful Taking of Personal Property or Equipment

SPONSOR(S): Farkas

TIED BILLS: None

IDEN./SIM. BILLS: SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
2) Business Regulation Committee		Watson <i>Ju</i>	Liepshutz <i>H/M</i>
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Current law provides that it is a criminal offense to:

- Obtain property or equipment by trick or false representation with the intent to defraud the lawful owner;
- Hire or lease property or equipment with the intent to defraud the lawful owner; and
- Abandon or refuse to redeliver hired or leased property at the termination of the agreed upon time period with the intent to defraud the lawful owner.

However, this offense may not be prosecuted if the agreement between the lessor and lessee is a rental-purchase agreement, unless the lessor holds title to the personal property or equipment throughout the agreement.

This bill removes the exclusion regarding rental-purchase agreements, and the related exception to the exclusion regarding title to the personal property or equipment.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill may expand the scope of s. 812.155, F.S. and thereby increase the number of persons that are subject to criminal penalties for failure to return leased personal property or equipment.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 812, F.S., contains theft crimes. Section 812.155, F.S., creates a theft offense related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.

Subsection (1) provides that it is a crime to obtain any personal property by trick, deceit, or fraudulent or willful false representation. Subsection (2) provides it is a crime to hire or lease personal property with intent to defraud. Subsection (3) provides that it is a crime to fail to return rented personal property at the conclusion of the rental period if such failure to return is done with the intent to defraud, abandon, or willfully refuse to return the property. Subsections (4) and (5) provide conditions and evidentiary presumptions by which a court may infer that a lessee intended to defraud the lessor should the lessee fail to timely return the leased personal property or equipment.

The offense is a first-degree misdemeanor if it involves property valued at less than \$300, and is a third-degree felony if the property is valued at \$300 or more.¹

When first enacted, the law contained an exclusion which provided that the criminal offenses at s. 812.155, F.S., would not apply to a "rental-purchase agreement that permits the lessee to acquire ownership of the personal property or equipment".² An exception to the exclusion was added in 2001.³ The exception provides that the exclusion does not apply, and thus a person may be prosecuted under s. 812.155, F.S., if the "rental store retains title to the personal property or equipment throughout the rental-purchase agreement period."

The current law is unclear in several respects. It is unclear what the term "rental store" means and what persons or entities it includes, as the term is not defined by statute. As the rental store must retain title throughout the agreement period in order to preserve the store's ability to prosecute a lessee who fails to return personal property or equipment, it appears that a rental store cannot sell or assign the right to collect the payments due under the agreement.⁴ Finally, as it is not common for a rental store to sell or assign the right to collect the lease payments, it appears that the exception may, in practice, render the exclusion meaningless in all but a few cases.

¹ A first degree misdemeanor is punishable by a fine of up to \$1,000 and imprisonment of up to one year. A third degree felony is punishable by a fine of up to \$5,000 and imprisonment of up to five years. See ss. 775.082 and 775.083, F.S. The third degree felonies in this section are not ranked in the Offense Severity Ranking Chart, and thus default to a level 1 offense. See s. 921.0023, F.S.

² See amendment at 1992 Senate Journal, page 461, February 27, 1992.

³ Chapter 2001-141, L.O.F.

⁴ Sale or assignment of the right to collect payments would, in the case of a rental-purchase agreement, also involve transferring title of the personal property or equipment to the entity entitled to collect the payments. This type of transaction is sometimes referred to as selling the commercial paper. There is no apparent public policy consideration for limiting or restricting the sale of commercial paper by a rental store.

In criminal law, every element of the offense must be proven beyond a reasonable doubt. As to s. 812.155, F.S., elements of the offense that the prosecution must prove include: that the agreement between the lessor and the lessee/defendant was not a rental-purchase agreement or, if it is, that the rental store retains title to the personal property or equipment throughout the rental-purchase agreement period. In practice, the exclusion and the exception can create confusion as they require the prosecutor to prove the absence of a fact.

Effect of Bill

This bill amends s. 812.155, F.S., to delete the exclusion related to rental purchase agreements. Thus, a lessee may be prosecuted for failure to return leased property or equipment regardless of whether the agreement between the parties was a rental-purchase agreement, and regardless of whether the lessor retains title to the personal property or equipment throughout the rental-purchase agreement period.

C. SECTION DIRECTORY:

Section 1 amends s. 812.155, F.S., to delete the exclusion related to lease-purchase agreements.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 10, of the Florida Constitution provides that "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed." This bill as drafted may apply to a rental purchase agreement effective prior to the effective date of the bill. It is possible that courts will limit application of this bill to rental-purchase agreements made on or after the effective date of the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill has an effective date of July 1, 2006. Traditionally, general bills and bills affecting state revenues have an effective date of July 1, 2006, to correspond to the state's fiscal year. Bills affecting the criminal law traditionally have an effective date of October 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled

2 An act relating to the unlawful taking of personal
3 property or equipment; amending s. 812.155, F.S.; deleting
4 a provision specifying that the prohibition against
5 obtaining personal property or equipment with intent to
6 defraud does not apply to a rental-purchase agreement
7 unless the rental store retains title to the property or
8 equipment throughout the period of the rental-purchase
9 agreement; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Section 812.155, Florida Statutes, is amended
14 to read:

15 812.155 Hiring, leasing, or obtaining personal property or
16 equipment with the intent to defraud; failing to return hired or
17 leased personal property or equipment; rules of evidence.--

18 (1) OBTAINING BY TRICK, FALSE REPRESENTATION,
19 ETC.--Whoever, with the intent to defraud the owner or any
20 person lawfully possessing any personal property or equipment,
21 obtains the custody of such personal property or equipment by
22 trick, deceit, or fraudulent or willful false representation
23 shall be guilty of a misdemeanor of the second degree,
24 punishable as provided in s. 775.082 or s. 775.083, unless the
25 value of the personal property or equipment is of a value of
26 \$300 or more; in that event the violation constitutes a felony
27 of the third degree, punishable as provided in s. 775.082, s.
28 775.083, or s. 775.084.

29 (2) HIRING OR LEASING WITH THE INTENT TO
30 DEFRAUD.--Whoever, with intent to defraud the owner or any
31 person lawfully possessing any personal property or equipment of
32 the rental thereof, hires or leases said personal property or
33 equipment from such owner or such owner's agents or any person
34 in lawful possession thereof shall, upon conviction, be guilty
35 of a misdemeanor of the second degree, punishable as provided in
36 s. 775.082 or s. 775.083, unless the value of the personal
37 property or equipment is of a value of \$300 or more; in that
38 event the violation constitutes a felony of the third degree,
39 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

40 (3) FAILURE TO REDELIVER HIRED OR LEASED PERSONAL
41 PROPERTY.--Whoever, after hiring or leasing any personal
42 property or equipment under an agreement to redeliver the same
43 to the person letting such personal property or equipment or his
44 or her agent at the termination of the period for which it was
45 let, shall, without the consent of such person or persons and
46 with the intent to defraud, abandon or willfully refuse to
47 redeliver such personal property or equipment as agreed, shall,
48 upon conviction, be guilty of a misdemeanor of the second
49 degree, punishable as provided in s. 775.082 or s. 775.083,
50 unless the value of the personal property or equipment is of a
51 value of \$300 or more; in that event the violation constitutes a
52 felony of the third degree, punishable as provided in s.
53 775.082, s. 775.083, or s. 775.084.

54 (4) EVIDENCE OF FRAUDULENT INTENT.--

55 (a) In prosecutions under this section, obtaining the
56 property or equipment under false pretenses; absconding without

57 payment; or removing or attempting to remove the property or
58 equipment from the county without the express written consent of
59 the lessor, is prima facie evidence of fraudulent intent.

60 (b) In a prosecution under subsection (3), failure to
61 redeliver the property or equipment within 5 days after receipt
62 of, or within 5 days after return receipt from, the certified
63 mailing of the demand for return is prima facie evidence of
64 fraudulent intent. Notice mailed by certified mail, return
65 receipt requested, to the address given by the renter at the
66 time of rental shall be deemed sufficient and equivalent to
67 notice having been received by the renter, should the notice be
68 returned undelivered.

69 (c) In a prosecution under subsection (3), failure to pay
70 any amount due which is incurred as the result of the failure to
71 redeliver property after the rental period expires, and after
72 the demand for return is made, is prima facie evidence of
73 fraudulent intent. Amounts due include unpaid rental for the
74 time period during which the property or equipment was not
75 returned and include the lesser of the cost of repairing or
76 replacing the property or equipment if it has been damaged.

77 (5) DEMAND FOR RETURN.--Demand for return of overdue
78 property or equipment and for payment of amounts due may be made
79 in person, by hand delivery, or by certified mail, return
80 receipt requested, addressed to the lessee's address shown in
81 the rental contract.

82 (6) NOTICE REQUIRED.--As a prerequisite to prosecution
83 under this section, the following statement must be contained in
84 the agreement under which the owner or person lawfully

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possessing the property or equipment has relinquished its custody, or in an addendum to that agreement, and the statement must be initialed by the person hiring or leasing the rental property or equipment:

Failure to return rental property or equipment upon expiration of the rental period and failure to pay all amounts due (including costs for damage to the property or equipment) are prima facie evidence of intent to defraud, punishable in accordance with section 812.155, Florida Statutes.

~~(7) EXCLUSION OF RENTAL PURCHASE AGREEMENTS. This section does not apply to personal property or equipment that is the subject of a rental purchase agreement that permits the lessee to acquire ownership of the personal property or equipment unless the rental store retains title to the personal property or equipment throughout the rental purchase agreement period.~~

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 159
SPONSOR(S): McInvale and others
TIED BILLS:

Regulation of Real Estate Appraisers

IDEN./SIM. BILLS: SB 466

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston <i>[Signature]</i>	Liepshutz <i>[Signature]</i>
2) State Administration Appropriations Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate appraisers' statutes, part II of chapter 475, F.S.

The Appraisal Qualifications Board ("AQB") acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. A person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The bill requires the board to prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the AQB in order to be qualified as a "residential appraiser" or as a "general appraiser."

The bill specifies the duties for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision," "supervisory appraiser," and "training." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill prohibits a supervising appraiser from being employed by a person who is in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a gradual phase out of this regulatory category. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category. The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to currently licensed individuals.

No significant fiscal impact is anticipated as a result of the provisions of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

3. Expand individual freedom - The bill prohibits a supervising appraiser from being employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

B. EFFECT OF PROPOSED CHANGES:

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Several themes are prevalent in the bill and are supported by various changes to statutory text.

Present Situation

Compliance with changing federal standards

The definitions section of part II of chapter 475, F.S., provides that an "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." The definition specifically states, "However, in order to be recognized in a federally related transaction, an appraisal report must be written."

"Federally related transaction" is defined as "any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser." Additionally, "appraisal foundation" or "foundation" is defined by statute to mean "the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois."

The Appraisal Qualifications Board ("AQB") is located within the Appraisal Foundation and acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. Therefore, a person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The AQB has adopted changes that will become effective January 1, 2008 to the minimum qualification criteria for appraisers.

The bill deletes the statutory criteria to be certified as a "residential appraiser" [2,500 hours of experience and 120 classroom hours of education] or as a "general appraiser" [3,000 hours of experience and 180 classroom hours of education].

In order to be qualified as a certified "residential appraiser" or as a "general appraiser," the bill requires the board to "prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation." This language is designed to allow changes at the state level to reflect future changes in federal qualifications for licensure and not conflict with the potential challenge as an unlawful delegation of legislative authority. See section A. CONSTITUTIONAL ISSUES and section B. RULE-MAKING AUTHORITY of this analysis.

Present Situation

Supervisor/trainee direct supervision requirements

The current definition section of part II of chapter 475, F.S., defines "supervisory appraiser" to mean a licensed appraiser or a certified residential or general appraiser who directs the supervision of one or more registered "trainees." The definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit, by rule, the geographic area within which a supervisor may work. The terms "direct supervision" and "training" are not currently defined.

Section 475.6221, F.S., requires "the primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser." This section further provides that "the role and responsibility of the supervisory appraiser is determined by rule of the board."

The bill specifies requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision," "supervisory appraiser," and "training." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill defines "direct supervision" as "the degree of supervision overseeing the work of a trainee appraiser" [allowing] "control over and detailed professional knowledge of the work being done." The definition continues and provides that "direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board."

The bill defines "training" to mean "the process of providing for and making available to a registered trainee appraiser, under direct supervision" [which is newly defined in the bill] "a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills."

Present Situation

Supervisor/trainee business relationship restrictions

In addition to the direct supervision requirements noted above, s. 475.6221, F.S. also requires that "a registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser."

The bill amends s. 475.6221, F.S., to prohibit a supervising appraiser to be employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

The bill also amends s. 475.612, F.S., to repeat the requirement that "a registered trainee appraiser may only receive compensation from his or her authorized certified or licensed appraiser."

Present situation

Licensing nomenclature

Section 475.612, F.S., currently prohibits a person from using the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report **"in connection with any federally related transaction"** unless that person is certified, licensed, or registered by the DBPR.

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a phase out of this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued. Reference to the term license would continue until all licenses expire for failure to renew or are revoked under disciplinary proceedings. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category.

The bill deletes the reference **"in connection with any federally related transaction"** and, as a result, the prohibition against using the specified titles of "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," would apply to all real estate appraisal transactions.

The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to the dwindling universe of these licensed practitioners.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.611, F.S., relating to definitions.

Section 2. Amends s. 475.612, F.S., to address reporting and valuation services, as well as, the direct payment of compensation to certified or licensed appraisers.

Section 3. Amends s. 475.615, F.S., to revise qualifications for registration or certification.

Section 4. Amends s. 475.617, F.S., to address education and experience requirements.

Section 5. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisor appraiser.

Section 6. Amends s. 475.6222, F.S., to require a primary or secondary supervisor appraiser to provide training, in addition to direct supervision, to an appraiser trainee.

Section 7. Amends s. 475.623, F.S. to require registration of a firm or business name in addition to the location of their operations.

Section 8. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No significant economic impact on the private sector is anticipated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The DBPR points out that a "primary focus of the bill is making sufficient changes to the current state regulatory schemes in order to comply with future federal requirements for the licensing of appraisers." In part, the bill is designed to reflect revisions to federal appraiser licensing requirements under Florida rule making procedures in an attempt to avoid the potential constitutional question of the unlawful delegation of legislative authority.

House bill drafting services looks to the following guidelines when reviewing legislation authorizing authority to track federal guidelines:

Federal laws or rules in existence at the time of the adoption of the statute may be used as standards and guidelines, but the Legislature may not prospectively adopt future federal law. *Brazil v. Division of Administration, Department of Transportation*, 347 So.2d 755 (Fla. 1st DCA 1977), concerned a statute that gave the Department of Transportation the power to enforce restrictions on billboards "subject to current federal regulations." The District Court of Appeal held that it would be an unconstitutional delegation of legislative power for the Legislature to adopt in advance any federal act or federal administrative rule. The court therefore applied a limiting construction to the statute, construing the term "current" to mean in effect as of the date of the adoption of the Florida statute.

The Florida Supreme Court has considered this issue in the context of criminal prohibitions of controlled substances. In *State v. Welch*, 279 So.2d 11 (Fla. 1973), the court held that a provision of the drug abuse law that included within controlled substances "all drugs controlled by drug abuse laws of the United States, now or in the future" was an unlawful delegation of legislative power in that it attempted to incorporate by reference future federal legislation. The court applied a limiting construction to the statute that had the effect of invalidating the incorporation of future federal acts.

Also see *Florida Industrial Commission et al. v. State ex rel. Orange State Oil Co.*, 21 So.2d 599 (Fla. 1945).

B. RULE-MAKING AUTHORITY:

The bill specifies that

"To be certified as a residential appraiser [and to be certified as a general appraiser], an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by the board. The board shall prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation."

The authority of the board may be clearer if the bill specifies that prescribed education and experience requirements be adopted by rule.

The DBPR notes that "definitions are provided to define specific legal requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. In the case of "training" the definition requires a planned, prepared, and coordinated program or routine of instruction and education, but does not specifically vest the Florida Real Estate Appraisal Board with the authority to promulgate rules."

C. DRAFTING ISSUES OR OTHER COMMENTS:

See B. above.

Additionally, various definitions specified in part II of chapter 475, F.S., currently include substantive provisions within definitional text. The bill also includes substantive authority within definitional text. As a common practice substantive provisions, such as rule making authority, are included in statutory text rather than as a part of the definitional meaning of specified terms or phrases. See definitions at line 89 (direct supervision), line 103 (licensed appraiser), and line 115 (supervisory appraiser).

The DBPR states that "changes in Section 5 located on page 111 [actually page 11]. Line 298 provide that a supervisory appraiser may [actually "may not"] be employed by a trainee or by a company, firm, or partnership in which the trainee has an interest. However, this language does not address situations where the relationship between the supervisory appraiser and the trainee resembles an independent contractor status."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to regulation of real estate appraisers;
3 amending s. 475.611, F.S.; revising and providing
4 definitions; amending s. 475.612, F.S.; revising
5 requirements relating to work performed by persons who are
6 not certified, licensed, and registered; providing
7 requirements relating to issuance of appraisal reports and
8 compensation of appraisers, including trainees; amending
9 s. 475.615, F.S., relating to qualifications for
10 registration, licensure, or certification; revising
11 education and experience requirements; amending s.
12 475.617, F.S.; removing obsolete provisions establishing
13 education and experience requirements for licensure as an
14 appraiser; revising education and experience requirements
15 for certification as a residential appraiser or general
16 appraiser; amending s. 475.6221, F.S.; prohibiting
17 supervisory appraisers from certain employment; amending
18 s. 475.6222, F.S.; requiring supervisory appraisers to
19 provide direct training to registered trainee appraisers;
20 amending s. 475.623, F.S.; requiring appraisers to furnish
21 their firm or business name and any change in that name to
22 the Department of Business and Professional Regulation;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (1) of section 475.611, Florida
28 Statutes, is amended to read:

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29 475.611 Definitions.--

30 (1) As used in this part, the term:

31 (a) "Appraisal" or "appraisal services" means the services
32 provided by certified or licensed appraisers or registered
33 trainee appraisers, and includes:

34 1. "Appraisal assignment" denotes an engagement for which
35 a person is employed or retained to act, or could be perceived
36 by third parties or the public as acting, as an agent or a
37 disinterested third party in rendering an unbiased analysis,
38 opinion, review, or conclusion relating to the nature, quality,
39 value, or utility of specified interests in, or aspects of,
40 identified real property.

41 2. "Analysis assignment" denotes appraisal services that
42 relate to the employer's or client's individual needs or
43 investment objectives and includes specialized marketing,
44 financing, and feasibility studies as well as analyses,
45 opinions, and conclusions given in connection with activities
46 such as real estate brokerage, mortgage banking, real estate
47 counseling, or real estate consulting.

48 3. "Appraisal review assignment" denotes an engagement for
49 which an appraiser is employed or retained to develop and
50 communicate an opinion about the quality of another appraiser's
51 appraisal, appraisal report, or work. An appraisal review may or
52 may not contain the reviewing appraiser's opinion of value.

53 (b) "Appraisal Foundation" or "foundation" means the
54 Appraisal Foundation established on November 20, 1987, as a not-
55 for-profit corporation under the laws of Illinois.

56 (c) "Appraisal report" means any communication, written or
57 oral, of an appraisal, appraisal review, appraisal consulting
58 service, analysis, opinion, or conclusion relating to the
59 nature, quality, value, or utility of a specified interest in,
60 or aspect of, identified real property, and includes any report
61 communicating an appraisal analysis, opinion, or conclusion of
62 value, regardless of title. However, in order to be recognized
63 in a federally related transaction, an appraisal report must be
64 written.

65 (d) "Appraisal review" means the act or process of
66 developing and communicating an opinion about the quality of
67 another appraiser's appraisal, appraisal report, or work.

68 (e) "Appraisal subcommittee" means the designees of the
69 heads of the federal financial institutions regulatory agencies
70 established by the Federal Financial Institutions Examination
71 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

72 (f) "Appraiser" means any person who is a registered
73 trainee real estate appraiser, licensed real estate appraiser,
74 or a certified real estate appraiser. An appraiser renders a
75 professional service and is a professional within the meaning of
76 s. 95.11(4)(a).

77 (g) "Board" means the Florida Real Estate Appraisal Board
78 established under this section.

79 (h) "Certified general appraiser" means a person who is
80 certified by the department as qualified to issue appraisal
81 reports for any type of real property.

82 (i) "Certified residential appraiser" means a person who
83 is certified by the department as qualified to issue appraisal

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reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(j) "Department" means the Department of Business and Professional Regulation.

(k) "Direct supervision" means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(l)~~(k)~~ "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(m)~~(l)~~ "Licensed appraiser" means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

(n)~~(m)~~ "Registered trainee appraiser" means a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a

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112 licensed or certified appraiser. A registered trainee appraiser
113 may accept appraisal assignments only from her or his primary or
114 secondary supervisory appraiser.

115 (o)~~(n)~~ "Supervisory appraiser" means a licensed appraiser,
116 a certified residential appraiser, or a certified general
117 appraiser responsible for the direct supervision of one or more
118 registered trainee appraisers and fully responsible for
119 appraisals and appraisal reports prepared by those registered
120 trainee appraisers. The board, by rule, shall determine the
121 responsibilities of a supervisory appraiser, the geographic
122 proximity required, the minimum qualifications and standards
123 required of a licensed or certified appraiser before she or he
124 may act in the capacity of a supervisory appraiser, and the
125 maximum number of registered trainee appraisers to be supervised
126 by an individual supervisory appraiser.

127 (p) "Training" means the process of providing for and
128 making available to a registered trainee appraiser, under direct
129 supervision, a planned, prepared, and coordinated program, or
130 routine of instruction and education, in appraisal professional
131 and technical skills.

132 (q)~~(e)~~ "Uniform Standards of Professional Appraisal
133 Practice" means the most recent standards approved and adopted
134 by the Appraisal Standards Board of the Appraisal Foundation.

135 (r)~~(p)~~ "Valuation services" means services pertaining to
136 aspects of property value and includes such services performed
137 by certified appraisers, registered trainee appraisers, and
138 others.

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139 ~~(s)~~~~(q)~~ "Work file" means the documentation necessary to
140 support an appraiser's analysis, opinions, and conclusions.

141 Section 2. Section 475.612, Florida Statutes, is amended
142 to read:

143 475.612 Certification, licensure, or registration
144 required.--

145 (1) A person may not use the title "certified real estate
146 appraiser," "licensed real estate appraiser," or "registered
147 trainee real estate appraiser," or any abbreviation or words to
148 that effect, or issue an appraisal report ~~in connection with any~~
149 ~~federally related transaction~~, unless such person is certified,
150 licensed, or registered by the department under this part.

151 However, the work upon which an appraisal report is based may be
152 performed by a person who is not a certified or licensed
153 appraiser or registered trainee appraiser if the work report is
154 supervised and approved, and the report is signed, by a
155 certified or licensed appraiser who has full responsibility for
156 all requirements of the report and valuation service. Only a
157 certified or licensed appraiser may issue an appraisal report
158 and receive direct compensation for providing valuation services
159 for the appraisal report. A registered trainee appraiser may
160 only receive compensation from his or her authorized certified
161 or licensed appraiser.

162 (2) This section does not preclude a Florida licensed real
163 estate broker, sales associate, or broker associate who is not a
164 Florida certified or licensed real estate appraiser ~~or~~
165 ~~registered trainee real estate appraiser~~ from providing
166 valuation services for compensation. Such persons may continue

167 to provide valuation services for compensation so long as they
168 do not represent themselves as certified, licensed, or
169 registered under this part.

170 (3) This section does not apply to a real estate broker or
171 sales associate who, in the ordinary course of business,
172 performs a comparative market analysis, gives a price opinion,
173 or gives an opinion of the value of real estate. However, in no
174 event may this comparative market analysis, price opinion, or
175 opinion of value of real estate be referred to or construed as
176 an appraisal.

177 (4) This section does not prevent any state court or
178 administrative law judge from certifying as an expert witness in
179 any legal or administrative proceeding an appraiser who is not
180 certified, licensed, or registered; nor does it prevent any
181 appraiser from testifying, with respect to the results of an
182 appraisal.

183 (5) This section does not apply to any full-time graduate
184 student who is enrolled in a degree program in appraising at a
185 college or university in this state, if the student is acting
186 under the direct supervision of a certified or licensed
187 appraiser and is engaged only in appraisal activities related to
188 the approved degree program. Any appraisal report by the student
189 must be issued in the name of the supervising individual who is
190 responsible for the report's content.

191 (6) This section does not apply to any employee of a
192 local, state, or federal agency who performs appraisal services
193 within the scope of her or his employment. However, this
194 exemption does not apply where any local, state, or federal

195 agency requires an employee to be registered, licensed, or
196 certified to perform appraisal services.

197 Section 3. Subsection (1) of section 475.615, Florida
198 Statutes, is amended to read:

199 475.615 Qualifications for registration, licensure, or
200 certification.--

201 (1) Any person desiring to act as a registered trainee
202 appraiser or as a licensed or certified appraiser must make
203 application in writing to the department in such form and detail
204 as the board shall prescribe. Each applicant must be at least 18
205 years of age and hold the level of education and experience
206 required for the type of license being sought ~~a high school~~
207 ~~diploma or its equivalent~~. At the time of application, a person
208 must furnish evidence satisfactory to the board of successful
209 completion of required education and evidence of required
210 experience, if any.

211 Section 4. Section 475.617, Florida Statutes, is amended
212 to read:

213 475.617 Education and experience requirements.--

214 (1) To be registered as a trainee appraiser, an applicant
215 must present evidence satisfactory to the board that she or he
216 has successfully completed at least 75 hours of approved
217 academic courses in subjects related to real estate appraisal,
218 which shall include coverage of the Uniform Standards of
219 Professional Appraisal Practice from a nationally recognized or
220 state-recognized appraisal organization, career center,
221 accredited community college, college, or university, state or
222 federal agency or commission, or proprietary real estate school

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223 that holds a permit pursuant to s. 475.451. The board may
224 increase the required number of hours to not more than 100
225 hours. A classroom hour is defined as 50 minutes out of each 60-
226 minute segment. Past courses may be approved on an hour-for-hour
227 basis.

228 ~~(2) To be licensed as an appraiser, an applicant must~~
229 ~~present evidence satisfactory to the board that she or he.~~

230 ~~(a) Has 2 years of experience in real property appraisal~~
231 ~~as defined by rule.~~

232 ~~(b) Has successfully completed at least 90 classroom~~
233 ~~hours, inclusive of examination, of approved academic courses in~~
234 ~~subjects related to real estate appraisal, which shall include~~
235 ~~coverage of the Uniform Standards of Professional Appraisal~~
236 ~~Practice from a nationally recognized or state recognized~~
237 ~~appraisal organization, career center, accredited community~~
238 ~~college, college, or university, state or federal agency or~~
239 ~~commission, or proprietary real estate school that holds a~~
240 ~~permit pursuant to s. 475.451. The board may increase the~~
241 ~~required number of hours to not more than 120 hours. A classroom~~
242 ~~hour is defined as 50 minutes out of each 60 minute segment.~~
243 ~~Past courses may be approved by the board and substituted on an~~
244 ~~hour-for-hour basis.~~

245 ~~(2)(3)~~ To be certified as a residential appraiser, an
246 applicant must present satisfactory evidence to the board that
247 she or he has met the minimum education and experience
248 requirements prescribed by the board. The board shall prescribe
249 education and experience requirements that meet or exceed the

250 real property appraiser qualification criteria established by
251 the Appraisal Qualifications Board of the Appraisal Foundation. +

252 ~~(a) Has at least 2,500 hours of experience obtained over a~~
253 ~~24-month period in real property appraisal as defined by rule.~~

254 ~~(b) Has successfully completed at least 120 classroom~~
255 ~~hours, inclusive of examination, of approved academic courses in~~
256 ~~subjects related to real estate appraisal, which shall include~~
257 ~~coverage of the Uniform Standards of Professional Appraisal~~
258 ~~Practice from a nationally recognized or state-recognized~~
259 ~~appraisal organization, career center, accredited community~~
260 ~~college, college, or university, state or federal agency or~~
261 ~~commission, or proprietary real estate school that holds a~~
262 ~~permit pursuant to s. 475.451. The board may increase the~~
263 ~~required number of hours to not more than 165 hours. A classroom~~
264 ~~hour is defined as 50 minutes out of each 60-minute segment.~~
265 ~~Past courses may be approved by the board and substituted on an~~
266 ~~hour-for-hour basis.~~

267 ~~(3)(4)~~ To be certified as a general appraiser, an
268 applicant must present evidence satisfactory to the board that
269 she or he has met the minimum education and experience
270 requirements prescribed by the board. The board shall prescribe
271 education and experience requirements that meet or exceed the
272 real property appraiser qualification criteria established by
273 the Appraisal Qualifications Board of the Appraisal Foundation. +

274 ~~(a) Has at least 3,000 hours of experience obtained over a~~
275 ~~30-month period in real property appraisal as defined by rule.~~

276 ~~(b) Has successfully completed at least 180 classroom~~
277 ~~hours, inclusive of examination, of approved academic courses in~~

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278 ~~subjects related to real estate appraisal, which shall include~~
 279 ~~coverage of the Uniform Standards of Professional Appraisal~~
 280 ~~Practice from a nationally recognized or state recognized~~
 281 ~~appraisal organization, career center, accredited community~~
 282 ~~college, college, or university, state or federal agency or~~
 283 ~~commission, or proprietary real estate school that holds a~~
 284 ~~permit pursuant to s. 475.451. The board may increase the~~
 285 ~~required number of hours to not more than 225 hours. A classroom~~
 286 ~~hour is defined as 50 minutes out of each 60 minute segment.~~
 287 ~~Past courses may be approved by the board and substituted on an~~
 288 ~~hour for hour basis.~~

289 (4)-(5) Each applicant must furnish, under oath, a detailed
 290 statement of the experience for each year of experience she or
 291 he claims. Upon request, the applicant shall furnish to the
 292 board, for its examination, copies of appraisal reports or file
 293 memoranda to support the claim for experience.

294 Section 5. Subsection (3) is added to section 475.6221,
 295 Florida Statutes, to read:

296 475.6221 Employment of and by registered trainee real
 297 estate appraisers.--

298 (3) A supervisory appraiser may not be employed by a
 299 trainee or by a company, firm, or partnership in which the
 300 trainee has a controlling interest.

301 Section 6. Section 475.6222, Florida Statutes, is amended
 302 to read:

303 475.6222 Supervision and training of registered trainee
 304 appraisers.--The primary or secondary supervisory appraiser of a
 305 registered trainee appraiser shall provide direct supervision

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306 and training to the registered trainee appraiser. The role and
307 responsibility of the supervisory appraiser is determined by
308 rule of the board.

309 Section 7. Section 475.623, Florida Statutes, is amended
310 to read:

311 475.623 Registration of firm or business name and office
312 location.--Each appraiser registered, licensed, or certified
313 under this part shall furnish in writing to the department each
314 firm or business name and address from which she or he operates
315 in the performance of appraisal services. Each appraiser must
316 notify the department of any change of firm or business name and
317 any change of address within 10 days on a form provided by the
318 department.

319 Section 8. This act shall take effect July 1, 2006.

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Bill No. **HB 159**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Business Regulation
Representative(s) McInvale offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 475.611, Florida
Statutes, is amended to read:

475.611 Definitions.--

(1) As used in this part, the term:

(a) "Appraisal" or "appraisal services" means the services
provided by certified or licensed appraisers or registered
trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which
a person is employed or retained to act, or could be perceived
by third parties or the public as acting, as an agent or a
disinterested third party in rendering an unbiased analysis,
opinion, review, or conclusion relating to the nature, quality,
value, or utility of specified interests in, or aspects of,
identified real property.

2. "Analysis assignment" denotes appraisal services that
relate to the employer's or client's individual needs or
investment objectives and includes specialized marketing,

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23 financing, and feasibility studies as well as analyses,
24 opinions, and conclusions given in connection with activities
25 such as real estate brokerage, mortgage banking, real estate
26 counseling, or real estate consulting.

27 3. "Appraisal review assignment" denotes an engagement for
28 which an appraiser is employed or retained to develop and
29 communicate an opinion about the quality of another appraiser's
30 appraisal, appraisal report, or work. An appraisal review may or
31 may not contain the reviewing appraiser's opinion of value.

32 (b) "Appraisal Foundation" or "foundation" means the
33 Appraisal Foundation established on November 20, 1987, as a not-
34 for-profit corporation under the laws of Illinois.

35 (c) "Appraisal report" means any communication, written or
36 oral, of an appraisal, appraisal review, appraisal consulting
37 service, analysis, opinion, or conclusion relating to the
38 nature, quality, value, or utility of a specified interest in,
39 or aspect of, identified real property, and includes any report
40 communicating an appraisal analysis, opinion, or conclusion of
41 value, regardless of title. However, in order to be recognized
42 in a federally related transaction, an appraisal report must be
43 written.

44 (d) "Appraisal review" means the act or process of
45 developing and communicating an opinion about the quality of
46 another appraiser's appraisal, appraisal report, or work.

47 (e) "Appraisal subcommittee" means the designees of the
48 heads of the federal financial institutions regulatory agencies
49 established by the Federal Financial Institutions Examination
50 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

51 (f) "Appraiser" means any person who is a registered
52 trainee real estate appraiser, licensed real estate appraiser,
53 or a certified real estate appraiser. An appraiser renders a

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professional service and is a professional within the meaning of s. 95.11(4)(a).

(g) "Board" means the Florida Real Estate Appraisal Board established under this section.

(h) "Certified general appraiser" means a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

(i) "Certified residential appraiser" means a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

(j) "Department" means the Department of Business and Professional Regulation.

(k) "Direct supervision" means the degree of supervision required of a supervisory appraiser overseeing the work of a registered trainee appraiser by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.

(l)~~(k)~~ "Federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser.

(m)~~(l)~~ "Licensed appraiser" means a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on

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85 such real estate or real property as may be authorized by
86 federal regulation. After July 1, 2003, the department shall not
87 issue licenses for the category of licensed appraiser.

88 (n)~~(m)~~ "Registered trainee appraiser" means a person who
89 is registered with the department as qualified to perform
90 appraisal services only under the direct supervision of a
91 licensed or certified appraiser. A registered trainee appraiser
92 may accept appraisal assignments only from her or his primary or
93 secondary supervisory appraiser.

94 (o)~~(n)~~ "Supervisory appraiser" means a licensed appraiser,
95 a certified residential appraiser, or a certified general
96 appraiser responsible for the direct supervision of one or more
97 registered trainee appraisers and fully responsible for
98 appraisals and appraisal reports prepared by those registered
99 trainee appraisers. The board, by rule, shall determine the
100 responsibilities of a supervisory appraiser, the geographic
101 proximity required, the minimum qualifications and standards
102 required of a licensed or certified appraiser before she or he
103 may act in the capacity of a supervisory appraiser, and the
104 maximum number of registered trainee appraisers to be supervised
105 by an individual supervisory appraiser.

106 (p) "Training" means the process of providing for and
107 making available to a registered trainee appraiser, under direct
108 supervision, a planned, prepared, and coordinated program, or
109 routine of instruction and education, in appraisal professional
110 and technical skills as determined by rule of the board.

111 (q)~~(o)~~ "Uniform Standards of Professional Appraisal
112 Practice" means the most recent standards approved and adopted
113 by the Appraisal Standards Board of the Appraisal Foundation.

114 (r)~~(p)~~ "Valuation services" means services pertaining to
115 aspects of property value and includes such services performed

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by certified appraisers, registered trainee appraisers, and others.

(s) ~~(q)~~ "Work file" means the documentation necessary to support an appraiser's analysis, opinions, and conclusions.

Section 2. Section 475.612, Florida Statutes, is amended to read:

475.612 Certification, licensure, or registration required.--

(1) A person may not use the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report ~~in connection with any federally related transaction~~, unless such person is certified, licensed, or registered by the department under this part. However, the work upon which an appraisal report is based may be performed by a person who is not a certified or licensed appraiser or registered trainee appraiser if the work report is supervised and approved, and the report is signed, by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation service. Only a certified or licensed appraiser may issue an appraisal report and receive direct compensation for providing valuation services for the appraisal report. A registered trainee appraiser may only receive compensation for appraisal services from his or her authorized certified or licensed appraiser.

(2) This section does not preclude a Florida licensed real estate broker, sales associate, or broker associate who is not a Florida certified or licensed real estate appraiser ~~or registered trainee real estate appraiser~~ from providing valuation services for compensation. Such persons may continue to provide valuation services for compensation so long as they

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do not represent themselves as certified, licensed, or registered under this part.

(3) This section does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a price opinion, or gives an opinion of the value of real estate. However, in no event may this comparative market analysis, price opinion, or opinion of value of real estate be referred to or construed as an appraisal.

(4) This section does not prevent any state court or administrative law judge from certifying as an expert witness in any legal or administrative proceeding an appraiser who is not certified, licensed, or registered; nor does it prevent any appraiser from testifying, with respect to the results of an appraisal.

(5) This section does not apply to any full-time graduate student who is enrolled in a degree program in appraising at a college or university in this state, if the student is acting under the direct supervision of a certified or licensed appraiser and is engaged only in appraisal activities related to the approved degree program. Any appraisal report by the student must be issued in the name of the supervising individual who is responsible for the report's content.

(6) This section does not apply to any employee of a local, state, or federal agency who performs appraisal services within the scope of her or his employment. However, this exemption does not apply where any local, state, or federal agency requires an employee to be registered, licensed, or certified to perform appraisal services.

Section 3. Section 475.615, Florida Statutes, is amended to read:

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178 475.615 Qualifications for registration, ~~licensure~~, or
179 certification. --

180 (1) Any person desiring to act as a registered trainee
181 appraiser or as a ~~licensed or~~ certified appraiser must make
182 application in writing to the department in such form and detail
183 as the board shall describe. Each applicant must be at least 18
184 years of age and hold a high school diploma or its equivalent.
185 ~~At the time of application, a person must furnish evidence of~~
186 ~~successful completion of required education and evidence of~~
187 ~~required experience, if any.~~

188 (2) The board is authorized to waive or modify any
189 education, experience, or examination requirements established
190 in this part section in order to conform with any such
191 requirements established by the Appraisal Qualifications Board
192 of the Appraisal Foundation ~~and recognized by the Appraisal~~
193 ~~Subcommittee~~ or any successor body recognized by federal law,
194 including any requirements adopted on February 20, 2004. The
195 board shall implement this section by rule.

196 (3) Appropriate fees, as set forth in the rules of the
197 board pursuant to s. 475.6147 and a fingerprint card must
198 accompany all applications for registration and ~~certification,~~
199 ~~or licensure~~. The fingerprint card shall be forwarded to the
200 Division of Criminal Justice Information Systems within the
201 Department of Law Enforcement for purposes of processing the
202 fingerprint card to determine if the applicant has a criminal
203 history record. The fingerprint card shall also be forwarded to
204 the Federal Bureau of Investigation for purposes of processing
205 the fingerprint card to determine if the applicant has a
206 criminal history record. The information obtained by the
207 processing of the fingerprint card by the Florida Department of
208 Law Enforcement and the Federal Bureau of Investigation shall be

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209 sent to the department for the purpose of determining if the
210 applicant is statutorily qualified for registration or
211 ~~,certification, or licensure.~~ Effective July 1, 2006, an
212 applicant shall provide fingerprints in electronic format.

213 (4) In the event that the applicant is currently a
214 registered trainee appraiser or a licensed or certified
215 appraiser and is making application to obtain a different status
216 of appraisal credential licensure, should such application be
217 received by the department within 180 days prior to through 180
218 days after the applicant's scheduled renewal, the charge for the
219 application shall be established by the rules of the board
220 pursuant to s. 475.6147.

221 (5) At the time of filing a notarized statement for
222 registration, ~~licensure~~, or certification, the applicant must
223 sign a pledge to comply with the Uniform Standards of
224 Professional Appraisal Practice upon registration, ~~licensure~~, or
225 certification, and must indicate in writing that she or he
226 understands the types of misconduct for which disciplinary
227 proceedings may be initiated. The application shall expire 1
228 year from the date received, ~~if the applicant for registration,~~
229 ~~licensure, or certification fails to take the appropriate~~
230 ~~examination.~~

231 (6) All applicants must be competent and qualified to make
232 real estate appraisals with safety to those with whom they may
233 undertake a relationship of trust and confidence and the general
234 public. If any applicant has been denied registration,
235 licensure, or certification, or has been disbarred, or the
236 applicant's registration, license, or certificate to practice or
237 conduct any regulated profession, business, or vocation, has
238 been revoked or suspended by this or any other state, any
239 nation, or any possession or district of the United States, or

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any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser, the applicant shall be deemed not to be qualified unless, because of lapse of time and subsequent good conduct, and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration, ~~licensure~~, or certification.

(7) No applicant seeking to become registered, ~~licensed~~, or certified under this part may be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

Section 4. Section 475.616, Florida Statutes, is amended to read:

475.616 Examination requirements. - To be ~~licensed or~~ certified as an appraiser, the applicant must demonstrate, by passing a written examination, that he or she possesses:

(1) A knowledge of technical terms commonly used in real estate appraisal.

(2) An understanding of the principles of land economics, real estate appraisal processes, reliable sources of appraising data, and problems likely to be encountered in the gathering, interpreting and processing of data in carrying out appraisal disciplines.

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(3) An understanding of the standards for the development and communication of real estate appraisals as provided in this part.

(4) An understanding of the types of misconduct for which disciplinary proceedings may be initiated against a licensed or certified appraiser, as set forth in this part.

(5) Knowledge of the theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal. ~~that are appropriate for the licensure or certification for which application is made.~~

Section 5. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.--

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 ~~75~~ hours of approved academic courses in subjects related to real estate appraisal, which shall include Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 ~~100~~ hours. A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

~~(2) To be licensed as an appraiser, an applicant must present evidence satisfactory to the board that she or he:~~

~~(a) Has 2 years of experience in real property appraisal as defined by rule.~~

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~~(b) Has successfully completed at least 90 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include coverage of the Uniform Standards of Professional Appraisal Practice from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 120 hours. A classroom hour is defined as 50 minutes out of each 60 minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.~~

~~(2) (3)~~ To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria established adopted on February 20, 2004 by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 ~~120~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include a 15-hour National ~~coverage of the Uniform Standards of Professional Appraisal Practice~~ course from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real

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estate school that holds a permit pursuant to s. 475.451. ~~The board may increase the required number of hours to not more than 165 hours.~~ A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) ~~(4)~~ To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria adopted on February 20, 2004 by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 3,000 hours of experience obtained over a 30-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 300 ~~180~~ classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which shall include ~~coverage of the~~ a 15-hour National Uniform Standards of Professional Appraisal Practice course from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. ~~The board may increase the required number of hours to not more than 225 hours.~~ A classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(4) ~~(5)~~ Each applicant must furnish, under oath, a detailed statement of the experience for each year of experience she or he claims. Upon request, the applicant shall furnish to the

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board, for its examination, copies of appraisal reports or file memoranda to support the claim for experience. Any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant no less than five years from the date of certification. The board may implement the provisions of this section by rule.

Section 6. Section 475.6171, Florida Statutes, is created to read:

475.6171 Issuance of Registration or Certification -- The registration or certification of an applicant may be issued upon receipt of the following:

(1) A complete application indicating compliance with qualifications as specified in s. 475.615.

(2) Proof of successful course completion as specified in s. 475.617.

(3) Proof of experience for certification as specified in s. 475.617.

(4) If required, by passing a written examination as specified in s. 475.616. No certification shall be issued based upon any examination results obtained more than twenty-four months from the date of examination.

(5) The board shall implement this section by rule.

Section 7. Subsection (3) is added to section 475.6221, Florida Statutes, to read:

475.6221 Employment of and by registered trainee real estate appraisers. --

(3) A supervisory appraiser may not be employed by a trainee or by a corporation, partnership, firm or group in which the trainee has a controlling interest.

Section 8. Section 475.6222, Florida Statutes, is amended to read:

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475.6222 Supervision and training of trainee appraisers.--

The primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.

Section 9. Section 475.623, Florida Statutes, is amended to read:

475.623 Registration of firm or business name and office Location.--

Each appraiser registered, licensed, or certified under this part shall furnish in writing to the department each firm or business name and address from which she or he operates in the performance of appraisal services. Each appraiser must notify the department of any change of firm or business name and any change of address within 10 days on a form provided by the department.

Section 10. Section 475.624, Florida Statutes, is amended to read:

475.624 Discipline. -- The board deny an application for registration, ~~license~~, or certification; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration, license, or certification of any such appraiser, or place any such appraiser on probation, if it finds that the registered trainee, licensee, or certificateholder:

(1) Has violated any provisions of this part or s. 455.227(1): however, certificateholders, registrants, and

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licensees under this part are exempt from the provisions of s.
455.227(1)(i).

(2) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, express, or implied, in an appraisal assignment; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the registered trainee, licensee, or certificateholder that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the registered trainee, licensee, or certificateholder, or was an identified member of the general public.

(3) Has advertised services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(4) Has violated any of the provisions of this part ~~section~~ or any lawful order or rule issued under the provisions of this part ~~section~~ or chapter 455.

(5) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a registered trainee appraiser or licensee or certified appraiser, or which involves moral turpitude or fraudulent or

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dishonest conduct. The record of a conviction certified or authenticated in such form as admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(6) Has had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against, or has been disbarred, or has had her or his registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or has had an application for such registration, license, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the united States.

(7) Has become temporarily incapacitated from acting as an appraiser with safety to those in a fiduciary relationship with her or him because of drunkenness, use of drugs, or temporary mental Derangement; however, suspension of a license, certification, or registration in such cases shall only be for the period of such incapacity.

(8) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; or, through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity.

(9) Has failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(10) Has been found guilty, for a second time, of any misconduct that warrants disciplinary action, or has been found

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485 guilty of a course of conduct or practice which shows that she
486 or he is incompetent, negligent, dishonest, or untruthful to an
487 extent that those with whom she or he may sustain a confidential
488 relationship may not safely do so.

489 (11) Has made or filed a report or record, either written
490 or oral, which the registered trainee, licensee, or
491 certificateholder knows to be false, has willfully failed to
492 file a report or record required by state or federal law; has
493 willfully impeded or obstructed such filing, or has induced
494 another person to impede or obstruct such filing. However, such
495 reports or records shall include only those which are signed or
496 presented in the capacity of a registered trainee appraiser or
497 licensed or certified appraiser.

498 (12) Has obtained or attempted to obtain a registration,
499 license, or certification by means of knowingly making a false
500 statement, submitting false information, refusing to provide
501 complete information in response to an application question, or
502 engaging in fraud, misrepresentation, or concealment.

503 (13) Has paid money or other valuable consideration,
504 except as required by this section, to any member or employee of
505 the board to obtain a registration, license, or certification
506 under this section.

507 (14) Has violated any standard for the development or
508 communication of a real estate appraisal or other provision of
509 the Uniform Standards of Professional Appraisal Practice.

510 (15) Has failed or refused to exercise reasonable
511 diligence in developing an appraisal or preparing an appraisal
512 report.

513 (16) Has failed to communicate an appraisal without good
514 cause.

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(17) Has accepted an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion, or valuation reached upon the consequences resulting from the appraisal assignment.

(18) Has failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which she or he operates as a registered trainee real estate appraisal or licensed or certified real estate appraiser.

Section 11. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled



An act relating to regulation of real estate appraisers; amending s. 475.611, F.S.; revising and providing definitions; amending s. 475.612, F.S.; revising requirements relating to work performed by persons who are not certified, licensed, and registered; providing requirements relating to issuance of appraisal reports and compensation of appraisers, including trainees; amending s. 475.615, F.S., relating to qualifications for registration, licensure, or certification; revising education and experience requirements; amending s. 475.616, F.S.; removing obsolete language relating to examination requirements; amending s. 475.617, F.S.; removing obsolete provisions establishing education and experience requirements for licensure as an appraiser; revising education and experience requirements for certification as

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546 a residential appraiser or general appraiser; creating s.
547 475.6171, F.S.; providing for the issuance of registration
548 and certification upon proper documentation; amending s.
549 475.6221, F.S.; prohibiting supervisory appraisers from
550 certain employment; amending s. 475.6222, F.S.; requiring
551 supervisory appraisers to provide direct training to
552 registered trainee appraisers; amending s. 475.623, F.S.;
553 requiring appraisers to furnish their firm or business name
554 and any change in that name to the Department of Business
555 and Professional Regulation; amending s. 475.624, F.S.;
556 removing obsolete references; correcting cross-references;
557 providing an effective date.
558

BILL #: HB 333 Public Food Service Establishments
SPONSOR(S): McInvale and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>		Watson 	Liepshutz 
2) <u>Local Government Council</u>			
3) <u>Commerce Council</u>			
4) _____			
5) _____			

This bill creates a three-year pilot program authorizing municipalities to adopt an ordinance establishing procedures for public food service establishments to apply for a limited exemption from existing DBPR rules. The exemption would allow dogs in designated outdoor sections of public food service establishments.

This bill provides minimum requirements for permit applications and safety and sanitation regulations to be implemented by the municipalities; provides for state assistance in the development of enforcement procedures and regulations; an effective date of July 1, 2006; and automatic repeal if not renewed by July 1, 2009.

This bill will have an indeterminate effect on municipalities and restaurants that choose to participate in the program relating to permitting revenues and fees and regulatory compliance. DBPR estimates a non-recurring cost of \$74,673 and recurring costs of \$613,009 that increase slightly per year to implement the bill. The Department of Health's best estimate of financial impact anticipates an annual recurring cost of \$13,187.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Less Government: This bill increases the number of government bodies that have regulatory authority over health guidelines for public food service establishments. DBPR represents that the bill will indirectly require more government employees.

Individual Liberty: This bill increases commercial and individual liberty by allowing public food service establishments and individuals the ability to choose to bring dogs into outdoor areas of such establishments if their municipality passes an appropriate ordinance.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The legislature requires the Division of Hotels and Restaurants to carry out laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety, and welfare. Pursuant to its rulemaking authority the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration. The Food Code is a reference document that "provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness."¹ Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. There are limited exceptions to the prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.²

Effect of Proposed Changes

This bill creates a three year pilot program that would permit patrons' dogs within designated outdoor areas of food service establishments. The bill grants municipalities the authority to adopt an ordinance that empowers itself to grant a variance to current Division of Hotels and Restaurant rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the governing body of their municipality. Minimum requirements for the information supplied in the application process are outlined in the bill.

The bill also sets forth specific regulations that must be included in all permits issued by participating municipalities. The regulations include various restrictions on the dogs' mobility, sanitation measures to reduce health risks posed by dogs, and signs notifying guests and employees of applicable rules and procedures. The bill also allows municipalities to include additional regulations and limitations in the permits to protect the health, safety and general welfare of the public. Municipalities are granted powers reasonably necessary to regulate and enforce this bill. The Division of Hotels and Restaurants is ordered to provide reasonable assistance to participating municipalities in the development of enforcement procedures and regulations.

The act has an effective date of July 1, 2006 and expires on July 1, 2009 unless reenacted by the legislature.

¹ See the FDA's introduction to the Food Code at <http://www.cfsan.fda.gov/~dms/fc05-int.html>

² See section 6-501.115 at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>

C. SECTION BY SECTION ANALYSIS

Section 1

Creates section 509.233, FS. Provides findings and intent, authorizes local exemption, provides limits on the exemption and permit requirements, grants enforcement powers, provides for state assistance, and creates future review and appeal.

Section 2

Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not impact state revenues.

2. Expenditures:

The DBPR represents that implementation of this bill would require \$74,673 in non-recurring costs to the department and \$613,000 in recurring costs that increase slightly each year. The recurring costs include the addition of 8 full time employees to assist municipalities in the development of regulations, handle an increased volume of calls to the Department's Customer Call Center, and to compensate for the additional time required to inspect exempted restaurants.

Department of Health speculates a recurring cost of \$13,187 annually in personnel expenses as a result of this bill. DOH is required to work with DBPR to perform epidemiological investigations in public food service establishments after complaints of foodborne illness. The Department of Health anticipates an increase in complaints as a result of the 'increased risk of unsanitary conditions.' The agency represents investigations could increase up to 2.5%.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has the potential to increase fees for participating municipalities through the permitting process.

2. Expenditures:

This bill has the potential to create an indeterminate impact upon expenditures associated with monitoring and enforcement in municipalities that choose to participate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Establishments choosing to participate will incur indeterminate costs associated with compliance to the signage and sanitation requirements and possibly training costs for personnel.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The statute specifically references the 2001 FDA Food Code. If the DBPR decides to adopt the recently published 2005 Food Code or some other guideline the statute would require amending to remain effective.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 333

2006

A bill to be entitled

An act relating to public food service establishments; creating s. 509.233, F.S.; providing legislative findings and intent; creating a pilot program; authorizing municipalities to adopt an ordinance establishing a local exemption to certain provisions of general law and agency rules relating to public food service establishments in order to permit patrons' dogs at certain designated outdoor portions of such establishments; providing for implementation and enforcement procedures; providing for state assistance; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 509.233, Florida Statutes, is created to read:

509.233 Public food service establishment requirements; local exemption for dogs in designated outdoor portions; pilot program.--

(1) FINDINGS AND INTENT.--

(a) The Legislature finds and declares the following:

1. This chapter requires the division to carry out all laws and rules relating to the inspection and regulation of public food service establishments for the purpose of safeguarding the public health, safety, and welfare.

2. Section 509.013(5) defines the term "public food service establishment" as "any building, vehicle, place, or

29 structure, or any room or division of a building, vehicle,
30 place, or structure where food is prepared, served, or sold for
31 immediate consumption on or in the vicinity of the premises;
32 called for or taken out by customers; or prepared prior to being
33 delivered to another location for consumption."

34 3. Section 509.032 requires the division to adopt and
35 enforce such rules as are necessary to ensure the protection of
36 the public from food-borne illness in public food service
37 establishments.

38 4. Section 509.032 further requires the division to adopt
39 such rules in order to "provide the standards and requirements
40 for obtaining, storing, preparing, processing, serving, or
41 displaying food in public food service establishments, approving
42 public food service establishment facility plans, conducting
43 necessary public food service establishment inspections for
44 compliance with sanitation regulations, cooperating and
45 coordinating with the Department of Health in epidemiological
46 investigations, and initiating enforcement actions, and for
47 other such responsibilities deemed necessary by the division."

48 5. Pursuant to the grant of rulemaking authority cited in
49 subparagraph 4., the division has adopted chapter 61C-4, Florida
50 Administrative Code, concerning public food service
51 establishments.

52 6. Section 61C-4.010, Florida Administrative Code,
53 concerning the sanitation and safety requirements of public food
54 service establishments, includes section 61C-4.010(6), relating
55 to physical facilities, which adopts by reference chapter 6 of
56 the 2001 FDA Food Code as developed by the Food and Drug

57 Administration of the United States Department of Health and
58 Human Services.

59 7. Section 6-501.115, 2001 FDA Food Code, generally
60 prohibits live animals from public food service establishments.

61 8. Section 509.032(7) expressly preempts to the state
62 regulation of public lodging establishments and public food
63 service establishments for compliance with the sanitation
64 standards adopted by the division.

65 9. Section 509.032(7) expressly limits the general home
66 rule powers of local governments as it relates to the regulation
67 of public food service establishments.

68 10. The purpose of this section is to allow participating
69 municipalities to enact an ordinance establishing procedures by
70 which public food service establishments could exempt their
71 establishments from section 6-501.115, 2001 FDA Food Code, and
72 allow patrons' dogs within certain designated outdoor portions
73 of their respective establishments.

74 (b) It is therefore the intent of the Legislature by this
75 section to establish a 3-year pilot program for municipalities
76 to allow patrons' dogs within certain designated outdoor
77 portions of public food service establishments.

78 (2) LOCAL EXEMPTION AUTHORIZED.--The governing body of a
79 municipality participating in the pilot program is authorized to
80 establish, by ordinance, a local exemption procedure to section
81 6-501.115, 2001 FDA Food Code, as adopted and incorporated by
82 the Division of Hotels and Restaurants at chapter 61C-4.010(6),
83 Florida Administrative Code.

84 (3) LOCAL DISCRETION; CODIFICATION.--

85 (a) The adoption of the local exemption procedure shall be
86 at the sole discretion of the governing body of a participating
87 municipality. Nothing in this section shall be construed to
88 require or compel a municipal governing body to adopt an
89 ordinance pursuant to this section.

90 (b) Any ordinance adopted pursuant to this section shall
91 provide for codification within the land development code of a
92 participating municipality.

93 (4) LIMITATIONS ON EXEMPTION; PERMIT REQUIREMENTS.--

94 (a) Any local exemption procedure adopted pursuant to this
95 section shall only provide a variance to section 6-501.115, 2001
96 FDA Food Code, to allow patrons' dogs within certain designated
97 outdoor portions of public food service establishments.

98 (b) In order to protect the health, safety, and general
99 welfare of the public, the local exemption procedure shall
100 require participating public food service establishments to
101 apply for and receive a permit from the governing body of the
102 municipality before allowing patrons' dogs on their premises.
103 The municipality shall require such information from the
104 applicant as the municipality deems reasonably necessary to
105 enforce the provisions of this section, but shall require, at a
106 minimum, the following information:

107 1. Name, location, and mailing address of the public food
108 service establishment.

109 2. Name, mailing address, and telephone contact
110 information of the permit applicant.

111 3. A diagram and description of the outdoor area to be
112 designated as available to patrons' dogs, including dimensions

of the designated area; a depiction of the number and placement of tables, chairs, and restaurant equipment, if any; the entryways and exits to the designated outdoor area; the boundaries of the designated area and of other areas of outdoor dining not available for patrons' dogs; any fences or other barriers; surrounding property lines and public rights-of-way, including sidewalks and common pathways; and such other information reasonably required by the permitting authority. The diagram or plan shall be accurate and to scale but need not be prepared by a licensed design professional.

4. A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

(c) In order to protect the health, safety, and general welfare of the public, the local exemption ordinance shall include such regulations and limitations as deemed necessary by the participating municipality and shall include, but not be limited to, the following requirements:

1. All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the food service establishment.

2. Patrons in a designated outdoor area shall be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.

141 3. Employees and patrons shall be instructed that they
142 shall not allow dogs to come into contact with serving dishes,
143 utensils, tableware, linens, paper products, or any other items
144 involved with food service operations.

145 4. Patrons shall keep their dogs on a leash at all times
146 and shall keep their dogs under reasonable control.

147 5. Dogs shall not be allowed on chairs, tables, or other
148 furnishings.

149 6. All table and chair surfaces shall be cleaned and
150 sanitized with an approved product between seating of patrons.
151 Spilled food and drink shall be removed from the floor or ground
152 between seating of patrons.

153 7. Accidents involving dog waste shall be cleaned
154 immediately and the area sanitized with an approved product. A
155 kit with the appropriate materials for this purpose shall be
156 kept near the designated outdoor area.

157 8. A sign or signs reminding employees of the applicable
158 rules shall be posted on premises in a manner and place as
159 determined by the local permitting authority.

160 9. A sign or signs reminding patrons of the applicable
161 rules shall be posted on premises in a manner and place as
162 determined by the local permitting authority.

163 10. A sign or signs shall be posted in a manner and place
164 as determined by the local permitting authority that places the
165 public on notice that the designated outdoor area is available
166 for the use of patrons and patrons' dogs.

HB 333

2006

167 (5) POWERS; ENFORCEMENT.--Participating municipalities
 168 shall have such powers as are reasonably necessary to regulate
 169 and enforce the provisions of this section.

170 (6) STATE ASSISTANCE.--The division shall provide
 171 reasonable assistance to participating municipalities in the
 172 development of enforcement procedures and regulations.

173 (7) FUTURE REVIEW AND REPEAL.--This section shall expire
 174 July 1, 2009, unless reviewed and saved from repeal through
 175 reenactment by the Legislature.

176 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

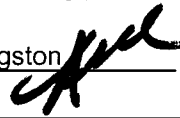

BILL #: HB 489

Electrical and Alarm System Contracting

SPONSOR(S): Legg

TIED BILLS:

IDEN./SIM. BILLS: SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>		Livingston 	Liepshutz 
2) <u>State Administration Appropriations Committee</u>			
3) <u>Governmental Operations Committee</u>			
4) <u>Commerce Council</u>			
5) _____			

SUMMARY ANALYSIS

The Electrical Contractors Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) regulates electrical contractors and alarm system contractors, and their employees. The scope of work of an electrical contractor includes alarm systems. The Division of State Fire Marshal (DSFM) within the Department of Financial Services (DFS) may inspect any building or fire alarm system regarding the issues of fire safety, prevention, and control.

The bill amends the definition of an "alarm system contractor" to provide that the term includes any person, firm, or corporation that engages in the business of alarm system contracting under an express or implied contract. It includes persons, firms, or corporations that undertake, offer to undertake, purport to have the authority to undertake, or submit bids to engage in alarm contracting.

The bill amends the definition of "monitoring" to provide that the electric or electronic signal may originate from any structure in place of the term "building" used in current law. The signal may also originate from outside the state. Individuals that propose to do alarm system monitoring in Florida, even if the alarm system which is monitored is physically located outside the State of Florida, will be required to obtain a license to perform this activity.

Current law requires registration of a person engaged in the business of electrical and alarm contracting. A registered contractor may contract only in the local jurisdiction for which his or her registration is issued. In lieu of registration, a contractor may be certified by the state which allows the contractor to engage in business statewide. The bill specifies additional qualifications for registration to require that a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

The bill exempts an audible fire alarm signal from the requirement in current law that every alarm system installed by a licensed contractor must have a device that automatically terminates the audible signal within 15 minutes of activation. The bill requires the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce government - Currently, the requirements for registering as an electrical or alarm contractor do not address age limit or moral character qualifications for those desiring to register for a license. The bill specifies statutory qualifications for registration to require that a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

B. EFFECT OF PROPOSED CHANGES:

The DSFM has limited jurisdiction over alarm system contractors and certified unlimited electrical contractors. The DFSM has authority to order an alarm system contractor to take corrective action to bring alarm systems into compliance with the required fire safety standards in chapter 633, F.S. The DBPR and the ECLB may also participate in these proceedings, at their discretion, but not as a party.

Electrical contractors and alarm system contractors are regulated pursuant to part II, of chapter 489, F.S. Under part II of chapter 489, F.S., the ECLB licenses and disciplines electrical contractors, as well as, alarm system contractors. The scope of work of an electrical contractor includes alarm systems. Part of the grounds for disciplinary action by the ECLB includes when the alarm system contractor or certified electrical contractor violates chapter 633, F.S., or the rules of the State Fire Marshal. The DBPR also has authority to issue stop-work orders for work on a project if there is cause to believe that work is being performed by an unlicensed alarm system contractor or unlicensed electrical contractor performing alarm system work.

Section 489.513, F.S., requires registration in the proper classification of any person engaged in the business of electrical or alarm system contracting. A registered contractor may contract only in the local jurisdiction for which his or her registration is issued. Certification by the ECLB permits the contractor to engage in the business of contracting in any jurisdiction in the state.

Section 489.505, F.S., defines various terms, including the following.

Present situation

Under s. 489.505(2), F.S., "alarm system contractor" means a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems for compensation.

Effect of proposed changes

The bill amends the definition of an "alarm system contractor" to include express or implied contracts; persons, firms, or corporations that undertake, offer to undertake, purport to have the authority to undertake, or submit bids to engage in alarm contracting; or a person who engages in the business through others.

Present situation

Section 489.505(7), F.S., defines "certified alarm system contractor" to mean an alarm system contractor who possesses a certificate of competency issued by the department. The scope of certification is limited to alarm circuits originating in the alarm control panel and equipment governed by the applicable provisions of Articles 725, 760, 770, 800, and 810 of the National Electrical Code,

Current Edition, and National Fire Protection Association Standard 72, Current Edition. The scope of certification for alarm system contractors also includes the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 77 volts, when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks.

The definition specifies that this provision governing the scope of certification does not create any mandatory licensure requirement.

"Registered electrical contractor" means an electrical contractor who has registered with the ECLB pursuant to fulfilling the competency requirements in the jurisdiction for which the registration is issued. A registered electrical contractor may contract only in the jurisdiction for which his or her registration is issued.

Effect of proposed changes

The bill amends the definition of "certified alarm system contractor" to include inspection and monitoring within the scope of the certification. It also increases from 77 volts to 98 volts the voltage limitation applicable to the activities that a certified alarm system contractor may perform. The higher voltage would increase the complexities of alarm systems in residential homes and businesses that perform additional functions for the occupant. These systems require the skill of an individual who has been trained in the electrical field to work on systems rated higher than the current 77 volt limits.

The bill deletes the provision in s. 489.505(7), F.S., that the scope of certification does not create a mandatory licensure requirement. By removing the language, the bill appears to imply that a license is required.

Present situation

"Personal emergency response system" means any device which is simply plugged into a telephone jack or electrical receptacle and which is designed to initiate a telephone call to a person who responds to, or has a responsibility to determine the proper response to, personal emergencies. It does not include hard-wired or wireless alarm systems designed to detect intrusion or fire. These systems are exempt from the requirements of part II of chapter 489, F.S.

Pursuant to s. 489.505(27), F.S., "Monitoring" means to receive electrical or electronic signals, originating from any building within the state, produced by any security, medical, fire, or burglar alarm, closed circuit television camera, or related or similar protective system and to initiate a response thereto. A person shall not have committed the act of monitoring if:

- (a) The person is an occupant of, or an employee working within, protected premises;
- (b) The person initiates emergency action in response to hearing or observing an alarm signal;
- (c) The person's action is incidental to his or her primary responsibilities; and
- (d) The person is not employed in a proprietary monitoring facility, as defined by the National Fire Protection Association pursuant to rule adopted under chapter 633, F.S..

Effect of proposed changes

The bill amends the definition of "monitoring" to provide that the electric or electronic signal may originate from any structure in place of the term "building" used in current law. The signal may also originate from outside the state. Individuals that propose to do alarm system monitoring in Florida, even if the alarm system which is monitored is physically located outside the State of Florida, will be required to obtain a license to perform this activity.

Present situation

Section 489.513, F.S., refers to the requirements for registering locally as an electrical or alarm licensee. Currently, the requirements do not address an age limit or moral character for those desiring to register for a license. Registration allows the individual to work only in the county where the license is issued.

Effect of proposed changes

The bill amends s. 489.513, F.S. to establish required statutory qualifications for registration as a contractor under part II of chapter 489, F.S. To be registered, a person must be at least 18 years of age and of good moral character, which the bill defines as having a personal history of honesty, fairness, and respect for the rights of others and for state and federal law.

The bill specifies that the ECLB may determine that an applicant does not satisfy the good moral character requirement only if there is a substantial connection between the lack of good moral character of the individual and the professional responsibilities of a registered contractor and the ECLB finding of a lack of good moral character is supported by clear and convincing evidence.

If an individual is found unqualified because of a lack of good moral character, the ECLB must furnish the individual with a statement containing the findings of the ECLB, a complete record of the evidence upon which the finding is based, and a notice of the individuals rights to a rehearing and appeal.

Present situation

Section 489.529, F.S., requires that all residential or commercial intrusion/burglary alarms that have central monitoring must make a verification call to the premises generating the alarm signal before the monitoring personnel contact law enforcement.

Effect of proposed changes

The bill amends s. 489.529, F.S., to require the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered. The requirement of the monitoring station to employ a call-verification method is designed to reduce the number of false alarms which may also reduce the costs to occupants of premises that must pay when law enforcement personnel respond to false alarms.

Present situation

Section 489.530, F.S., requires every audible alarm system to have a silencing device which is activated after 15 minutes by some automatic mechanism.

Effect of proposed changes

Section 489.530, F.S., is amended to exempt an audible fire alarm signal from the requirement that every alarm system installed by a licensed contractor must have a device that automatically terminates the audible signal within 15 minute of activation. This exemption applies whether the system is installed voluntarily or as a requirement of an adopted code.

C. SECTION DIRECTORY:

Section 1. Amends s. 489.505(2), F.S., to amend various definitions.

Section 2. Amends s. 489.513, F.S. to establish required qualifications for registration as a contractor under part II of chapter 489, F.S.

Section 3. Amends s. 489.529, F.S., to require the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered.

Section 4. Amends s. 489.530, F.S., to exempt an audible fire alarm signal from certain requirements.

Section 5. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes "the proposed bill mandates that the Board find by clear and convincing evidence that the Subject has not met the "Good Moral Character" requirements. This standard of review is a change from the current "preponderance of evidence" standard of review for license denial cases."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 489

2006

A bill to be entitled
An act relating to electrical and alarm system
contracting; amending s. 489.505, F.S.; revising
definitions; amending s. 489.513, F.S.; providing
additional requirements for registration as a contractor;
amending s. 489.529, F.S.; requiring central monitoring
stations to employ enhanced call verification methods
under certain circumstances; amending s. 489.530, F.S.;
exempting fire alarm systems from certain audible alarm
requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (7), (25), (27), and (28) of
section 489.505, Florida Statutes, are amended to read:

489.505 Definitions.--As used in this part:

(2) "Alarm system contractor" means a person whose
business includes the execution of contracts requiring the
ability, experience, science, knowledge, and skill to lay out,
fabricate, install, maintain, alter, repair, monitor, inspect,
replace, or service alarm systems for compensation, including,
but not limited to, all types of alarm systems for all purposes.
The term also means any person, firm, or corporation that
engages in the business of alarm system contracting under an
expressed or implied contract; that undertakes, offers to
undertake, purports to have the capacity to undertake, or
submits a bid to engage in the business of alarm system
contracting; or that does, itself or by or through others,

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2006

engage in the business of alarm system contracting.

(a) "Alarm system contractor I" means an alarm system contractor whose business includes all types of alarm systems for all purposes.

(b) "Alarm system contractor II" means an alarm system contractor whose business includes all types of alarm systems other than fire, for all purposes, except as herein provided.

(7) "Certified alarm system contractor" means an alarm system contractor who possesses a certificate of competency issued by the department. The scope of certification is limited to alarm circuits originating in the alarm control panel and equipment governed by the applicable provisions of Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition. The scope of certification for alarm system contractors also includes the installation, repair, fabrication, erection, alteration, addition, inspection, monitoring, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS) ~~77 volts~~, when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks; ~~however, this provision governing the scope of certification does not create any mandatory licensure requirement.~~

(25) "Burglar alarm system agent" means a person:

(a) Who is employed by a licensed alarm system contractor

57 or licensed electrical contractor;

58 (b) Who is performing duties which are an element of an
59 activity which constitutes alarm system contracting requiring
60 licensure under this part; and

61 (c) Whose specific duties include any of the following:
62 altering, installing, maintaining, moving, repairing, replacing,
63 servicing, inspecting, ~~selling onsite~~, or monitoring an
64 intrusion or burglar alarm system for compensation.

65 (27) "Monitoring" means to receive electrical or
66 electronic signals, originating from any structure building
67 within or outside of the state, regardless of whether those
68 signals are relayed through a jurisdiction outside of the state,
69 where such signals are produced by any security, medical, fire,
70 or burglar alarm, closed circuit television camera, access
71 control system, or related or similar protective system and are
72 intended by design to initiate a response thereto. A person
73 shall not have committed the act of monitoring if:

74 (a) The person is an occupant of, or an employee working
75 within, protected premises;

76 (b) The person initiates emergency action in response to
77 hearing or observing an alarm signal;

78 (c) The person's action is incidental to his or her
79 primary responsibilities; and

80 (d) The person is not employed in a proprietary monitoring
81 facility, as defined by the National Fire Protection Association
82 pursuant to rule adopted under chapter 633.

83 (28) "Fire alarm system agent" means a person:

84 (a) Who is employed by a licensed fire alarm contractor or

85 certified unlimited electrical contractor;

86 (b) Who is performing duties which are an element of an
87 activity that constitutes fire alarm system contracting
88 requiring certification under this part; and

89 (c) Whose specific duties include any of the following:
90 altering, installing, maintaining, moving, repairing, replacing,
91 servicing, selling ~~on site~~, or monitoring a fire alarm system for
92 compensation.

93 Section 2. Subsection (1) of section 489.513, Florida
94 Statutes, is amended to read:

95 489.513 Registration; application; requirements.--

96 (1) Any person engaged in the business of contracting in
97 the state shall be registered in the proper classification,
98 unless he or she is certified. Any person desiring to be a
99 registered contractor shall apply to the department for
100 registration, and:

101 (a) Be at least 18 years old.

102 (b) Be of good moral character.

103 1. "Good moral character" means a personal history of
104 honesty, fairness, and respect for the rights of others and for
105 the laws of this state and nation.

106 2. The board may determine that a person applying for
107 registration is ineligible for failure to satisfy the
108 requirement of good moral character only if:

109 a. There is a substantial connection between the lack of
110 good moral character of the individual and the professional
111 responsibilities of a registered contractor.

112 b. The finding by the board of lack of good moral

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character is supported by clear and convincing evidence.

3. When a person is found to be unqualified because of a lack of good moral character, the board shall furnish the person a statement containing the findings of the board, a complete record of evidence upon which the determination was based, and a notice of the rights of the person to a rehearing and appeal.

Section 3. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm verification calls required.--All residential or commercial intrusion/burglary alarms that have central monitoring must have a central monitoring verification call made to the premises generating the alarm signal, prior to alarm monitor personnel contacting a law enforcement agency for alarm dispatch. The central monitoring station must employ enhanced call verification methods for the premises generating the alarm signal if the first call is not answered. However, if the intrusion/burglary alarms have properly operating visual or auditory sensors that enable the monitoring personnel to verify the alarm signal, verification calling is not required.

Section 4. Section 489.530, Florida Statutes, is amended to read:

489.530 Audible alarms.--Every audible alarm system installed by a licensed contractor shall have a device to automatically terminate the audible signal within 15 minutes of activation. Fire alarms systems, whether installed voluntarily or as a requirement of an adopted code employing audible fire signals, shall be exempted as required by such code.

Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

HB 489 Bill No.

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill:

Representative(s) Attkisson offered the following:

Amendment (with title amendment)

and insert:

Section 1. Subsection (21) of section 489.503, F.S., is added
to read:

489.503 Exemptions.—

(21) Individuals or entities that install or repair
lightning rods and related systems.

===== T I T L E A M E N D M E N T =====

insert on line 3 after the word "contracting":

amending s. 489.503, F.S.; revising exemptions for lightning
rods;

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579

Cardrooms

SPONSOR(S): Bullard

TIED BILLS: None

IDEN./SIM. BILLS: SB 1422 by Senator Bullard

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	_____	Morris <i>gum</i>	Liepshutz <i>MM</i>
2) <u>Governmental Operations Committee</u>	_____	_____	_____
3) <u>State Administration Appropriations Committee</u>	_____	_____	_____
4) <u>Commerce Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Wagering on games of poker is currently authorized at cardrooms operated by pari-mutuel facilities in the state. There is a \$2 bet limit and a maximum of three raises in any round of betting. This bill authorizes cardrooms to also offer wagering, in the same manner, on games of dominoes.

The bill will have an insignificant positive fiscal impact on state revenue collections and will have no fiscal impact on state expenditures.

The bill provides that the act will take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty—The bill provides individuals with an additional gaming option by authorizing dominoes, in addition to poker, at licensed pari-mutuel facility cardrooms.

B. EFFECT OF PROPOSED CHANGES:

Dominoes

Dominoes are believed to have originated in China in the 12th century although other origins, notably Egypt and India, are also suggested and appeared in Europe in the early 18th century. An early set of dominoes was found in King Tut's tomb. An internet search reveals that there are numerous versions of the game of dominoes.¹ Dominoes games range in skill and complexity from Blind Hughie, a pure game of chance, to basic strategy games of Block or Draw Dominoes to Chickenfoot, Sniff, Tug of War, and Mexican Train Dominoes, etc. Dominoes may be played between individuals or with partners. Games of dominoes are popular among different segments of society and have a large constituency in the Hispanic communities of South Florida.

Cardrooms

Section 849.086, F.S., authorizes the operation of cardrooms at licensed pari-mutuel facilities in the state. The Department of Business and Professional Regulation's Division of Pari-mutuel Wagering is responsible for licensing and regulating cardroom activities and the operation of a cardroom is conditioned upon the operation of live pari-mutuel events.

As originally enacted in 1996, the cardroom statute defined authorized games to be those games set out in s. 849.085(2)(a), F.S., the penny-ante games statute. The cardroom statute also provided that the winnings of any player in a single round, hand, or game could not exceed \$10. Section 849.085(2)(a) defined penny-ante games as "poker, pinochle, bridge, rummy, canasta, hearts, *dominoes*, or mah-jongg." [emphasis added]

The cardroom statute was amended in 2003 to delete the reference to the penny-ante game statute and instead authorize only the game of poker in cardroom facilities. At that time the statute was also amended to replace the \$10 pot limit with a maximum bet of \$2 and no more than three raises in any round of betting. Consequently, as of 2003, poker is the only game that can be conducted in cardrooms.

The cardroom statute requires games of poker to be played in a non-banking manner; that is, the House is prohibited from being a participant in the game. As such, the statute requires the cardroom operator to provide a nonplaying dealer for each authorized card table at the cardroom. The dealer may not have any participatory interest in the game and provision of a dealer does not make it a banking game.

Cardroom operators are allowed to charge a fee for the right to participate in games conducted at the cardroom. Such fee may be either a flat fee or hourly rate for the use of a seat at the table or a rake subject to the posted maximum amount but may not be based on the amount won by players. These participation fees comprise the gross receipts from cardroom operations from which the state collects a 10 percent tax.

¹ For more information and examples see http://www.xs4all.nl/~spaanszt/Domino_Plaza.html; <http://www.domino-games.com/> last visited January 13, 2006.

Effect of Proposed Changes

This bill defines dominoes to mean:

“...a game of dominoes typically played with a set of 28 flat rectangular blocks, called bones, marked on one side, which is divided into two equal parts, with from zero to six dots, called pips, in each part. There are larger sets of blocks that contain a correspondingly higher number of pips. The term “dominoes” also refers to the set of blocks used to play the game.”

The bill amends s. 849.086, F.S., to allow wagering on games of dominoes at licensed cardrooms in pari-mutuel facilities. The bill does not change the wagering limitations in the existing cardroom statute – a dealer, a \$2 bet limit, and no more than three raises in any round of betting.

The bill also makes technical conforming changes in the definition for “cardroom” and “cardroom distributor” and when requiring cardroom employee occupational licenses.

The bill is expected to have a positive, but insignificant, impact on cardroom revenue collections and would take effect on July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends subsections (2) and (6) of s. 849.086, Florida Statutes, to authorize the play of dominoes in the cardrooms of pari-mutuel facilities.

Section 2. Provides that the bill will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to an impact statement provided by the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation with regard to similar legislation in the 2005 Regular Session, authorization for the play of dominoes at cardroom facilities in the state could be expected to have a positive, but insignificant, fiscal impact on state revenue collections.

2. Expenditures:

According to an impact statement provided by the Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation with regard to similar legislation in the 2005 Regular Session, authorization for the play of dominoes at cardroom facilities in the state is not expected to increase agency expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

One-quarter of revenues received from the gross receipts tax collected from cardroom operations are disbursed to the local governments where cardrooms are located. This bill could be expected to have a positive, but insignificant, fiscal impact on disbursements to those local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some pari-mutuel facilities expect the addition of dominoes at their cardroom facilities to have a positive economic benefit for the pari-mutuel facility, not only due to the play of dominoes, but also in increased wagering on pari-mutuel events and increased spending on other entertainment options available at the pari-mutuel facility.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill does not grant any additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Since there are many variations of the game of dominoes, the Division of Pari-mutuel Wagering suggested, during consideration of similar legislation in the 2005 Regular Session, that the bill should provide more specifics with regard to which particular dominoes games would be allowed to be conducted and how wagering would be conducted on those games.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 579

2006

A bill to be entitled

An act relating to cardrooms; amending s. 849.086, F.S.; providing for cardrooms to conduct games of dominoes; revising definitions; defining "dominoes"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a), (c), and (e) of subsection (2) and paragraph (a) of subsection (6) of section 849.086, Florida Statutes, are amended, paragraphs (h), (i), (j), and (k) of subsection (2) of that section are redesignated as paragraphs (i), (j), (k), and (l), respectively, and a new paragraph (h) is added to that subsection, to read:

849.086 Cardrooms authorized.--

(2) DEFINITIONS.--As used in this section:

(a) "Authorized game" means a game or series of games of poker or dominoes which are played in a nonbanking manner.

(c) "Cardroom" means a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations.

(e) "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

HB 579

2006

29 (h) "Dominoes" means a game of dominoes typically played
 30 with a set of 28 flat rectangular blocks, called bones, marked
 31 on one side, which is divided into two equal parts, with from
 32 zero to six dots, called pips, in each part. There are larger
 33 sets of blocks that contain a correspondingly higher number of
 34 pips. The term "dominoes" also refers to the set of blocks used
 35 to play the game.

36 (6) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE REQUIRED;
 37 APPLICATION; FEES.--

38 (a) A person employed or otherwise working in a cardroom
 39 as a cardroom manager, floor supervisor, pit boss, dealer, or
 40 any other activity related to cardroom operations while the
 41 facility is conducting card playing or games of dominoes must
 42 hold a valid cardroom employee occupational license issued by
 43 the division. Food service, maintenance, and security employees
 44 with a current pari-mutuel occupational license and a current
 45 background check will not be required to have a cardroom
 46 employee occupational license.

47 Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Strike-all Amendment by Bullard

Bill No. HB 579

COUNCIL/COMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

1 Council/Committee hearing bill: Business Regulation

2 Representative(s) Bullard offered the following:

3
4 **Strike All Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraphs (a), (c), and (e) of subsection (2),
7 paragraph (a) of subsection (4), paragraph (a) of subsection
8 (6), paragraph (c) of subsection (7), and paragraph (a) of
9 subsection (8) of section 849.086, Florida Statutes, are
10 amended, and present paragraphs (h), (i), (j), and (k) of
11 subsection (2) of that section are redesignated as paragraphs
12 (i), (j), (k), and (l), respectively, and a new paragraph (h) is
13 added to that subsection, to read:

14 849.086 Cardrooms authorized.--

15 (2) DEFINITIONS.--As used in this section:

16 (a) "Authorized game" means a game or series of games of
17 poker or dominoes which are played in a nonbanking manner.

18 (c) "Cardroom" means a facility where authorized ~~card~~
19 games are played for money or anything of value and to which the
20 public is invited to participate in such games and charged a fee

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Strike-all Amendment by Bullard

for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations.

(e) "Cardroom distributor" means any business that distributes cardroom paraphernalia such as card tables, betting chips, chip holders, dominoes, dominoes tables, drop boxes, banking supplies, playing cards, card shufflers, and other associated equipment to authorized cardrooms.

(h) "Dominoes" means a game of dominoes typically played with a set of 28 flat rectangular blocks, called bones, marked on one side, which is divided into two equal parts, with from zero to six dots, called pips, in each part. There are larger sets of blocks which contain a correspondingly higher number of pips. The term "dominoes" also refers to the set of blocks used to play the game.

(4) AUTHORITY OF DIVISION.--The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation shall administer this section and regulate the operation of cardrooms under this section and the rules adopted pursuant thereto, and is hereby authorized to:

(a) Adopt rules, including, but not limited to: the issuance of cardroom and employee licenses for cardroom operations; the operation of a cardroom; the review and approval of the play and wagering in a game or series of games of poker or a game of dominoes; recordkeeping and reporting requirements; and the collection of all fees and taxes imposed by this section.

(6) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE REQUIRED; APPLICATION; FEES.--

(a) A person employed or otherwise working in a cardroom as a cardroom manager, floor supervisor, pit boss, dealer, or

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Strike-all Amendment by Bullard

any other activity related to cardroom operations while the facility is conducting card playing or games of dominoes must hold a valid cardroom employee occupational license issued by the division. Food service, maintenance, and security employees with a current pari-mutuel occupational license and a current background check will not be required to have a cardroom employee occupational license.

(7) CONDITIONS FOR OPERATING A CARDROOM.--

(c) A cardroom operator must at all times employ and provide a nonplaying dealer for each table on which authorized card games which traditionally utilize a dealer are conducted at the cardroom. A cardroom operator must at all times employ and provide a nonplaying supervisor for each table on which an authorized dominoes game is conducted at the cardroom. Such dealers or dominoes game supervisors may not have any participatory interest in any game other than the dealing of cards or the supervision of dominoes games and may not have an interest in the outcome of the game. The providing of such dealers or dominoes games supervisors by a licensee shall not be construed as constituting the conducting of a banking game by the cardroom operator.

(8) METHOD OF WAGERS; LIMITATION.--

(a) No wagering may be conducted using money or other negotiable currency. Games may only be played utilizing a wagering system whereby all players' money is first converted by the house to tokens or chips which shall be used for wagering only at that specific cardroom. No wager of money or any other property or thing of value may be made on the outcome of an authorized game other than by the persons who are playing in such a game or in a series of such games. Any wager authorized

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Strike-all Amendment by Bullard

by this paragraph must be in strict compliance with this subsection.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove line(s) 4 and insert:

revising definitions; defining "dominoes"; authorizing
rulemaking relating to poker and dominoes; providing for
supervision of dominoes games at a cardroom; limiting wagering
related to authorized games; providing an

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